IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

I.T.R. No.29 of 1993
Date of decision: 15.09.2006

M/s Sangrur Vanaspati Mills Ltd.

---Appelicant

Vs.

The Commissioner of Income Tax, Patiala.

-----Respondent

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE RAJESH BINDAL

Present: Mr. P.C. Jain, Advocate
for the applicant.

Dr. N.L. Sharda, Advocate
for the respondent.

ORDER:

Following question of law has been referred for opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh, arising out of its order dated 3.7.1991 in respect of assessment year 1982-83:-

> "Whether on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that the assessee was not entitled to capitalize the expenditure of Rs.1,86,300/- incurred on electric line feeder etc. prior to commencement of business?"

The assessee company set up a factory for manufacture of Vanaspati Ghee. The previous year of the assessee relevant to assessment year 1982-83 ended on 31.8.1981. The assessee claimed the following amounts aggregating to Rs.2,08,154/- for capitalisation to the cost of plant and machinery for purpose of various allowances under the Income-tax Act, 1961 (for short, "the Act"):-

Date of expenditure	Nature of expenditure	Amount Rs.
19.5.78	Cost of temporary electric connection	21,854/-
9.1.80	Cost of power line for independent feeder	1,85,640/-
9.1.80	To inspection fee	660/-
		2,08,154/-

The Assessing Officer rejected the claim of the assessee on the basis that electric lines did not belong to the assessee and that as revenue expenditure it was not incurred in the relevant assessment year. The view of the Assessing Officer was confirmed by CIT(A).

The Tribunal upheld the claim of the assessee to the extent of Rs.21,854/- towards the cost of temporary electric connection which was held to be intimately connected with and having direct nexus in the construction and setting up of plant and machinery. The Tribunal, however, rejected the claim of the assessee for two sums aggregating to Rs.1,86,300/- on a finding that the said expenditure is not part and parcel of the plant and machinery. Expenditure on the cost of power line for independent feeder was held to be revenue in nature in light of the judgment of this Court in ***Commissioner of Income Tax*** v. ***Panbari Tea Co. Ltd.*** (1985)151 ITR 726.

Learned counsel for the assessee submits that the Tribunal wrongly observed that the expenditure in dispute was not part and parcel of the plant and machinery. The expenditure had to be treated as part and parcel of plant and machinery, which the assessee was entitled to capitalize, expenditure being prior to commencement of business. Reliance has been placed on the judgment of Hon'ble Supreme Court in ***Challapalli Sugar Ltd. v. The Commissioner of Income-tax*** (1975) 98 ITR 167 and ***Travencore Cochin Chemical Ltd. v. Commissioner of Income-tax*** (1977) 106 ITR 900.

In ***Challapalli Sugar***'s case (*Supra*) it was observed:

> "It would appear from the above that the accepted accountancy rule for determining the cost of fixed assets is to include all expenditure necessary to bring such assets into existence and to put them in working condition. In case money is borrowed by a newly started company which is in the process of constructing and erecting its plant, the interest incurred before the commencement of production on such borrowed money can be capitalized and added to the cost of the fixed assets which have been created as a result of such expenditure. The above rule of accountancy should, in our view, be adopted for determining the actual cost of the assets in the absence of any statutory definition or other indication to the contrary."

We find merit in the contention raised. The expenditure incurred by the assessee on the cost of powerline for independent feeder, incurred prior to commencement of production, had to be treated as part of plant and machinery being necessary for commencement of production and had to be capitalized. The Hon'ble Supreme Court in **Travancore Cochin**'s case (*Supra*) applied the test laid down in ***Atherton v. British Insulated and Helsby Cables Ltd.*** [1925] 10 TC 155 (HL) to the effect:-

> "When an expenditure is made with a view to bringing into existence an asset or an advantage for the enduring benefit of a trade, I think that there is very good reason (in the absence of special circumstances leading to an opposite conclusion) for treating such an expenditure as properly attributable not to revenue but to capital".

This view has been followed by the Hon'ble Supreme Court inter alia in ***Commissioner of Income Tax v. Bokaro Steel Ltd.*** (1999) 236 ITR 315.

Applying the above test to the present case, we are of the view that the expenditure incurred was necessary for the commencement of

business and was of enduring nature. The same had to be treated as capital expenditure.

Accordingly, the question is answered in favour of the assessee and against the revenue.

(ADARSH KUMAR GOEL)
JUDGE

September 15, 2006
ashwani

(RAJESH BINDAL)
JUDGE